IN THE HIGH Tribunal OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1052 of 1987
With
CROSS OBJECTION No. 26 of 2006
In
FIRST APPEAL No. 1052 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
KAMLESHKUMAR JAGJIVANDAS ZALA & 2 - Defendant(s)

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Appearance :
MS.JYOTI MEHTA for MR HARDIK C RAWAL for Appellant(s) : 1,
MR SA DESAI for Respondent(s) : 1,
DELETED for Respondent(s) : 2,
None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/04/2007

ORAL JUDGMENT

1. Ms. Jyoti Mehta, learned counsel under the authority of Shri Hardik C. Raval, learned counsel for the appellant; Shri S.A.Desai, learned counsel for the respondent no.1; respondent no.2 has already been deleted; none for the respondent no.3 though served.

2. Gujarat State Road Transport Corporation, being aggrieved by the judgment and award dated 12.9.86, passed by the Motor Accident Claims Tribunal [Main], Vadodara, in Motor Accident Claims Application No. 162 of 1984, partly granting claimant's application, is before this Tribunal under Section 110D of the Motor Vehicles Act. It must also be noted at this stage that the original claimant-respondent Kamleshkumar Jagjivandas Zala has also filed Cross Objections seeking enhancement of the compensation amount.

3. The short facts necessary for disposal of the present appeal are that an accident took place on 7.8.83 between 7.00 p.m. and 8.00 p.m. The claimant had boarded a vehicle S.T. Bus No. GRR 8387 as a passenger. He was returning by the said ST bus running between Surat and Radhanpur. When the bus reached between Palej and Karjan at about 7.00 p.m. and 8.00 p.m., the bus which was driven

rashly and negligently, left the road, crossed the road flank, took an overturn, which led to injuries to number of the persons. The claimant submitted that because of the accident, he had suffered permanent partial disability including loss of income of Rs. 1,30,000/-. He also submitted that he had to spend a sum of Rs. 10,000/- towards medical assistance. He also claimed a sum of Rs. 10,000/- for pain, shock and suffering. He claimed in all, a sum of Rs. 1,50,000/-.

4. The appellant/non-claimant submitted before the lower Tribunal that the bus was being driven at moderate speed, but on a turn, when the driver found that one on-going truck was being overtaken by another, to avoid accident or collision, the driver took a short turn but because of the rains, the vehicle could not be controlled. His submission is that the accident was inevitable and under the circumstances, neither the Gujarat State Road Transport Corporation nor the driver could be held answerable to the claim made by the claimant.

5. After examining the witnesses from both the sides, the learned Tribunal held that the driver was

driving the vehicle rashly and negligently, the accident was a result of rash and negligent driving, the driver did not take proper care to handle the vehicle. The Tribunal also found that the claimant had suffered permanent partial disability to the extent of 30%, he had spent good amount in medical assistance and he had also suffered loss of income and his income would be reduced for the future also.

6. Learned counsel for the appellant submits that the learned Tribunal erred in observing that the driver was driving the vehicle rashly and negligently. She submits that the facts would speak for themselves. It would clearly appear that to avoid a big collision, driver had to take a short left turn and if because of the rains, the bus skidded on the roadside, the driver could not be held to be rash or negligent. It is also submitted that the claimant claimed a sum of Rs. 10,000/- only under the head of pain, shock and suffering, but the learned Tribunal has awarded the sum of Rs. 25,000/- under the said head. She submits that no Tribunal could grant anything beyond the claim. It is also submitted that the income of the claimant was assessed on the higher

side, virtually in the absence of proper evidence. It is submitted that the claim petition be dismissed.

7. Shri S.A.Desai, learned counsel for the claimant submits that true it is that the claimant had claimed the sum of Rs. 10,000/- towards pain, shock and suffering, but nothing could stop the Tribunal from exercising its discretion in awarding the sum of Rs. 25,000/- if the Tribunal found that the claimant had to undergo as many as four operations. He also submits that the learned Tribunal assessed the income at a lower rate while in fact, evidence is that the claimant was earning good amount. He also submitted that the claimant has also filed Cross Objections for enhancement of the claim amount.

8. So far as the rash and negligent driving is concerned, principle of *res ipsa loquitur* would apply to the facts of the case. Undisputedly, the vehicle skidded from the main road and turtled on the side of the road. Ordinarily, if a bus is driven at a moderate speed and brakes are applied right in time, there would be no occasion for the bus to slip or skid on the sideline or turtle. The statements of the claimant and his witnesses

are sufficient to prove that the bus was driven rashly and negligently. After going through the evidence and the findings recorded by the learned Tribunal, I have no hesitation in observing that the learned Tribunal has recorded the finding in accordance with law. The said finding is accordingly confirmed.

9. The claimant had given break up of claim which will also be clear from para-4 of the judgment of the Tribunal. He had claimed an amount of Rs. 1,30,000/- towards loss of income and amount of Rs. 10,000/- towards the medical assistance and sum of Rs. 10,000/- under the head of pain, shock and suffering. In para-30, the learned Tribunal has awarded the sum of Rs. 25,000/- under the head of pain, shock and suffering and it has not given any reasons that why it was awarding the sum of Rs. 25,000/- under the head of pain, shock and suffering, specially when the claimant had claimed the sum of Rs. 10,000/- only. It is trite law that a Tribunal would not be entitled to award more than what has been claimed before it. Had the claimant claimed sum of Rs. 1,50,000/- in total without giving break up, then, the Tribunal would have been justified in awarding the sum of Rs.

25,000/- under the head of pain, shock and suffering, but the moment, a claimant comes up with the break up, then, the hands of the Tribunal would be tied up and it cannot cross the limits nor can it grant anything more than what is claimed. Said award of Rs. 25,000/- is reduced to the sum of Rs. 10,000/- as originally claimed.

10. So far as the Cross Objections are concerned, the Tribunal has observed that the claimant must have been earning the sum of Rs. 1,000/- per month or Rs.12000/- per year. From the records, it does not appear that the Tribunal had not taken into consideration the evidence of the parties or has not considered the source of income as projected by the present claimant. Assessment of income at Rs. 1,000/- per month or Rs. 12000/- per year would appear to be right and justified. However, while awarding the compensation, the Tribunal, instead of awarding 30% towards permanent partial disability, has awarded only 25%, that is, Rs. 250/- only. In fact, the Tribunal should have awarded Rs.300/- per month or Rs. 3600/- per year. I will award Rs.3600/- per year towards future loss to be suffered by the claimant.

11. It is submitted by the learned counsel for the

claimant that the Tribunal, without appreciating the judgments of the Supreme Court and without taking into consideration that the claimant was a young man of 30 years only and could also earn more in future, wrongly applied the multiplier of 12 while in fact, the multiplier of 18 ought to have been applied. Learned counsel for the appellant, on the other hand, submits that taking into consideration the uncertainties of the life, the Tribunal was justified in applying the multiplier of 12.

12. Taking into consideration the uncertainties of the life and that the claimant was young man of the age of 30 years at the time of the accident, I am of the opinion that multiplier of 15 would be appropriate. I accordingly apply this multiplier. 15 years' multiplier for Rs. 3600/- would come to the sum of Rs. 54,000/-. I hold that under the head of loss of future income because of the permanent partial disability, the claimant would be entitled to the sum of Rs. 54,000/- and the Tribunal was unjustified in awarding the sum of Rs. 36000/- only.

13. From the total amount of Rs. 68,000/- awarded by the learned Tribunal, I must deduct the sum of Rs.

15,000/- which was wrongly allowed in favour of the claimant under the head of pain, shock and suffering thereby reducing the said amount to Rs. 53,000/- only. To this amount of Rs. 53,000/- I shall add the sum of Rs. 18,000/- as amount under the head of future loss of income, the total amount now would be Rs. 71,000/-; the claimant would be entitled to interest at the rate as awarded by the learned Tribunal. If the appellant pays the amount within the period of three months, then, same rate of interest would be counted and if the amount is not paid within the period of three months, the appellant shall be liable to pay interest at the rate of 15%. The appeal and the Cross Objections, both are partly allowed. No costs.

[R.S. GARG, J.]

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